IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No. 3457 of 2005
Date of Decision: August 25, 2006

Joginder Pal ..... Appellant

versus

Radhey Sham .....Respondent

Present:- Shri Kanwaljit Singh, Advocate for the appellant.

Shri G.S. Ghuman, Advocate for the respondent.

HEMANT GUPTA, J.

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for specific performance of agreement dated 17.02.1999 was decreed.

Vide the aforesaid agreement, 8 Kanals of land was agreed to be sold to the plaintiff-respondent for a sum of Rs.1,00,000/-. Rs.60,000/- was paid as earnest money and the balance was to be paid at the time of execution of sale deed for which date 16.2.2000 was fixed. It is the case of the plaintiff that on the given date he has appeared before the Sub Registrar but the defendants was not present on the said date for the purpose of execution of sale deed. Thereafter, after issuance of notice calling upon the defendant to execute the sale deed, present suit for specific performance was filed on 31.3.2000.

Both the Courts below have returned concurrent finding of fact

that the agreement to sell was executed by the defendant appellant that the plaintiff was ready and willing to perform his part of the contract and consequently granted decree for specific performance of the agreement. To return such finding, learned first Appellate Court has relied upon statement of PW1 Jit Singh, Scribe, who has deposed that the agreement was executed at the instance of the appellant and that such agreement was entered in his register at serial No. 60 on 17.2.1999. PW2 is Pita Sawar Kant, one of the attesting witnesses, who has deposed in respect of the agreement to sell by the appellant after receipt of earnest money of Rs.60,000/-. It has been found by the learned Courts below that the defendant has simply denied the agreement to sell but the argument raised by the appellant that the appellant was working as a contractor along with plaintiff etc was not raised nor proved. Still further, it has been found that a notice dated 10.2.2000, Exhibit P-3, was served upon the defendant calling upon the defendant to execute the sale deed on 16.2.2000. The suit for specific performance of agreement has been filed within one month of the date fixed for execution of the sale deed.

In view of the above, I do not find any patent illegality or material irregularity in the finding recorded by the Courts below which may raise any substantial question of law for consideration by this Court in second appeal.

Dismissed.

August 25, 2006 (HEMANT GUPTA)
ks JUDGE